

ORIGINAL

FILED
HARRISBURG, PA

MAY 25 2004

MARY E. D'ANDREA, CLERK
Per 

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

CYNTHIA ANNE DIVEGLIA
formerly CYNTHIA ANNE KAYLOR
Plaintiff

v.

NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY
Defendant

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Civil Action No. 1 CV-00-1342

(Judge James McClure)

MOTION TO ENLARGE TIME IN WHICH TO RESPONDE TO
MOTIONS IN LIMINE

AND NOW, this 25th day of May, 2004, comes the Plaintiff and Defendant by and through their counsel who file the following Motion and in support thereof avers as follows:

1. The above action is a contract action for discontinuance of disability benefits by Defendant.

2. By Court Order dated March 23, 2004, this Honorable Court set May 17, 2004 as the deadline for filing Motions in Limine.

3. Both parties timely filed Motions in Limine.

4. A portion of Defendant's Motion in Limine was to exclude any expert opinion of plaintiff's treating physician, Dr. Patrick Borgen as being "expert" opinion as it relates to his recommendation that stress reduction was needed to help prevent recurrence of Plaintiff's cancer.

5. The last date for filing a Responsive Brief to Defendant's Motion in Limine is June 1, 2004, as determined by the Court's Order of March 23, 2004.

6. The discovery deposition and video deposition for possible use at trial was taken on Friday May 21, 2004 and involved approximately two and one-half hours of testimony and an expedited transcript of the trial deposition will not be available until Friday May 27, 2004.

7. From the Plaintiff's perspective, the transcripts of the testimony are essential to the disposition of the motion relating to Dr. Borgen, in that it will clearly document that all opinions expressed were from a treating physician and document that the need for stress reduction was part of his treatment of Plaintiff and was soundly based on clinical experience in over 10,000 patients and recognized by other leading cancer centers.

8. Without the actual transcripts, the court would only have statements and counter-

statements of counsel and the Court would have to guess which counsel statements characterizing Dr. Borgen's testimony was correct. By waiting for the transcripts to be completed, the court could read for itself the actual testimony and thus be in a far better position to decide the admissibility of the testimony.

9. Defendant also seeks an enlargement of time to file a responsive brief to Plaintiff's May 17, 2004, Motion in Limine.

10. The parties seek an enlargement of time from June 1, 2004, to June 8, 2004 to file responsive briefs to Motions in Limine filed May 17, 2004.

11. The defendant concurs with Plaintiff's Motion as is indicated on the Certificate of Concurrence, attached hereto and Plaintiff concurs with Defendant's request.

WHEREFORE, the parties request this Honorable Court to enlarge the time for filing responsive briefs to Motions in Limine filed May 17, 2004, from June 1, to June 8, 2004.

Respectfully submitted,

By: 

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DIVEGLIA AND KAYLOR, P.C.

ATTORNEY IN CHARGE FOR
Plaintiff, Cynthia A. Diveglia

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(Judge James McClure)

CERTIFICATE OF CONCURRENCE

I Archie Diveglia, hereby certify that I have spoken to Defense Counsel on May 24, 2004, in regard to this motion and he concurs with the filing of the motion.

Respectfully submitted,

By: 

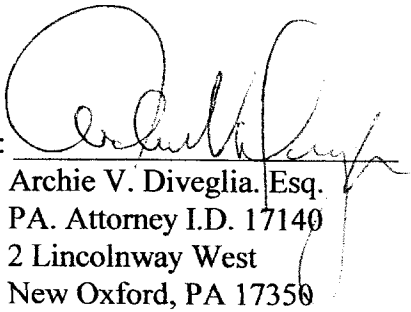
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DIVEGLIA AND KAYLOR, P.C.

ATTORNEY IN CHARGE FOR
Plaintiff, Cynthia A. Diveglia

CERTIFICATE OF SERVICE

I, ARCHIE V. DIVEGLIA, attorney for Plaintiff Cynthia A. Diveglia, on this 25th day of May, 2004, do hereby state that I have served a copy of **MOTION TO ENLARGE TIME IN WHICH TO RESPONDE TO MOTIONS IN LIMINE** upon counsel for Defendant by hand delivery at the office of Stevens & Lee.

By: 
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